

SENATE BILL 1084

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By: ~~Senator Conway~~ Senators Conway and Harrington

Introduced and read first time: March 3, 2010

Assigned to: Rules

Re-referred to: Education, Health, and Environmental Affairs, March 5, 2010

Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: March 29, 2010

CHAPTER _____

1 AN ACT concerning

2 **Maryland Higher Education Commission – Review of Program Proposals**

3 FOR the purpose of requiring the Maryland Higher Education Commission to review
4 certain program proposals through certain processes, including certain
5 testimony and the weighing of evidence; requiring the Commission to adopt
6 certain regulations that provide for the receipt of certain comments and
7 objections under certain circumstances; altering certain circumstances under
8 which ~~and certain deadlines by which~~ the Commission must act on certain
9 program proposals before a proposal is deemed approved; requiring the
10 Commission to make certain determinations through certain processes,
11 including receiving certain testimony and the weighing of evidence; requiring
12 the Commission to adopt certain regulations; repealing a certain provision that
13 states that a certain decision is final and not subject to further appeal or review;
14 providing for the application of this Act; and generally relating to the review of
15 program proposals by the Maryland Higher Education Commission.

16 BY repealing and reenacting, with amendments,
17 Article – Education
18 Section 11–206(b) and ~~(e)(2) and (6)~~ (e)(6) and 11–206.1(f)
19 Annotated Code of Maryland
20 (2008 Replacement Volume and 2009 Supplement)

21 BY repealing and reenacting, without amendments,
22 Article – Education

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Section 11-206(e)(1) ~~and (2)~~ and 11-206.1(e)
 2 Annotated Code of Maryland
 3 (2008 Replacement Volume and 2009 Supplement)

4 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 5 MARYLAND, That the Laws of Maryland read as follows:

6 **Article – Education**

7 11-206.

8 (b) (1) Prior to the proposed date of implementation, the governing body
 9 of an institution of postsecondary education shall submit to the Commission each
 10 proposal for:

11 (i) A new program; or

12 (ii) A substantial modification of an existing program.

13 (2) The Commission shall review each such proposal ~~THROUGH A~~
 14 ~~DELIBERATIVE FACT-FINDING PROCESS, INCLUDING RECEIVING WITNESS~~
 15 ~~TESTIMONY AND THE WEIGHING OF EVIDENCE~~ and:

16 (i) With respect to each public institution of postsecondary
 17 education, either approve or disapprove the proposal;

18 (ii) With respect to each nonpublic institution of higher
 19 education, either recommend that the proposal be implemented or that the proposal
 20 not be implemented; and

21 (iii) With respect to a private career school, either approve or
 22 disapprove the proposal.

23 **(3) THE COMMISSION SHALL ADOPT REGULATIONS THAT**
 24 **PROVIDE FOR:**

25 **(I) ~~THE~~ THE RECEIPT OF COMMENTS AND OBJECTIONS**
 26 **FROM APPROPRIATE PARTIES FOLLOWING SUBMISSION OF A COMPLETED**
 27 **PROPOSAL; AND**

28 **(II) THE REVIEW OF OBJECTIONS RECEIVED BY THE**
 29 **COMMISSION IN ACCORDANCE WITH A DELIBERATIVE FACT-FINDING PROCESS,**
 30 **INCLUDING RECEIVING WITNESS TESTIMONY AND THE WEIGHING OF EVIDENCE.**

31 **[(3)] (4) If the Commission DOES NOT RECEIVE ANY COMMENTS**
 32 **OR OBJECTIONS TO THE COMPLETED PROPOSAL AND fails to act within [60] 90**

1 days of the date of submission of the completed proposal, the proposal shall be deemed
2 approved.

3 ~~[(4)]~~ (5) Except as provided in paragraph ~~[(3)]~~ (4) of this subsection,
4 a public institution of postsecondary education and private career school may not
5 implement a proposal without the prior approval of the Commission.

6 ~~[(5)]~~ (6) Except as provided in paragraph ~~[(3)]~~ (4) of this subsection,
7 and subject to the provisions of § 17–105 of this article, a nonpublic institution of
8 higher education may implement a proposal that has not received a positive
9 recommendation by the Commission.

10 ~~[(6)]~~ (7) (i) If the Commission disapproves a proposal, the
11 Commission shall provide to the governing body that submits the proposal a written
12 explanation of the reasons for the disapproval.

13 (ii) After revising a proposal to address the Commission's
14 reasons for disapproval, the governing body may submit the revised proposal to the
15 Commission for approval.

16 (e) (1) In this subsection, "governing board" includes the board of trustees
17 of a community college.

18 (2) The Commission shall adopt regulations ~~[establishing] THAT:~~

19 ~~(I) REQUIRE A DELIBERATIVE FACT FINDING PROCESS,~~
20 ~~INCLUDING RECEIVING WITNESS TESTIMONY AND THE WEIGHING OF EVIDENCE;~~
21 ~~AND~~

22 ~~(II) ESTABLISH~~ standards for determining whether 2 or more
23 programs are unreasonably duplicative.

24 (6) (i) Prior to imposing a sanction under paragraph (5) of this
25 subsection, the Commission shall give notice of the proposed sanction to the governing
26 board of each affected institution.

27 (ii) 1. Within 20 days of receipt of the notice, any affected
28 institution may request an opportunity to meet with the Commission and present
29 objections.

30 2. If timely requested, the Commission shall provide
31 such opportunity prior to the Commission's decision to impose a sanction.

32 [(iii) The Commission's decision shall be final and is not subject
33 to further administrative appeal or judicial review.]

34 11–206.1.

1 (e) Within 30 days of receipt of a notice of an institution's intent to establish
2 a new program in accordance with subsection (b) of this section, the Commission may
3 file, or the institutions of higher education in the State may file with the Commission,
4 an objection to implementation of a proposed program provided the objection is based
5 on:

6 (1) Inconsistency of the proposed program with the institution's
7 approved mission for a public institution of higher education and the mission
8 statement published in the official catalog of a nonpublic institution of higher
9 education;

10 (2) Not meeting a regional or statewide need consistent with the
11 Maryland State Plan for Postsecondary Education;

12 (3) Unreasonable program duplication which would cause
13 demonstrable harm to another institution; or

14 (4) Violation of the State's equal educational opportunity obligations
15 under State and federal law.

16 (f) (1) If an objection is filed under subsection (e) of this section by the
17 Commission or an institution within 30 days of receipt of a notice of an institution's
18 intent to establish a new program, the Commission shall immediately notify the
19 institution's governing board and president.

20 (2) **[The] THROUGH A DELIBERATIVE FACT-FINDING PROCESS,**
21 **INCLUDING RECEIVING WITNESS TESTIMONY AND THE WEIGHING OF EVIDENCE,**
22 **THE** Commission shall determine if an institution's objection is justified based on the
23 criteria in subsection (e) of this section.

24 (3) An objection shall be accompanied by detailed information
25 supporting the reasons for the objection.

26 (4) If the Commission determines that an objection is justified, the
27 Commission shall negotiate with the institution's governing board and president to
28 modify the proposed program in order to resolve the objection.

29 (5) If the objection cannot be resolved within ~~30~~ **60** days of receipt of
30 an objection, the Commission shall make a final determination on approval of the new
31 program for a public institution of higher education or a final recommendation on
32 implementation for a nonpublic institution of higher education.

33 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
34 construed to apply only prospectively and may not be applied or interpreted to have
35 any effect on or application to any cause of action arising before the effective date of
36 this Act.

1 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take
2 effect July 1, 2010.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.